COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following standby rate tariffs: M.D.T.E. Nos. 136A and 137A, M.D.T.E. Nos. 237C, 238C, 239C, 254A and 255A; and M.D.T.E. Nos. 337A and 338A, filed on January 16, 2004, to become effective February 4, 2004, by Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company d/b/a NSTAR Electric.	)	D.T.E. 03-121

ADDITIONAL COMMENTS OF AMERICAN DG, INC., OFFICEPOWER L.L.C. AND TECOGEN INC. REGARDING THE JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

On June 4, 2004, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Light Company ("Companies" or "NSTAR Electric") submitted to the Department of Telecommunications and Energy ("Department") by e-mail a proposed Settlement Agreement entered into by the Companies, the Division of Energy Resources ("DOER"), Associated Industries of Massachusetts, Conservation Law Foundation ("CLF"), the Joint Supporters[1] and the Solar Business Association of New England ("SEBANE") (collectively the "Settling Parties"), together with a joint motion for approval of the Settlement Agreement.[2] American DG, Inc., OfficePower, L.L.C. and

1 The Joint Supporters are composed of Boston Public Schools; Co-Energy America, Inc.; National Association of Energy Service Companies, Inc.; Seamens Building Technologies, District 1; the E Cubed Company, LLC; Predicate, LLC; Energy Concepts Engineering PC; DgSolutions, LLC; and PACE Law School Energy Project.

2 On June 7, 2004, the Hearing Officer waived the Department's procedural requirement that a hard copy of the joint motion and settlement agreement be filed on June 4, 2004.

Tecogen Inc. reiterate and support the comments, and arguments therein, being filed concurrently by the New England Distributed Generation Coalition ("NEDGC") and The Energy Consortium ("TEC") opposing approval of the Settlement Agreement.

Notwithstanding our disagreement with the terms of the Settlement Agreement, should the Department approve the Settlement Agreement, American DG, Inc., OfficePower, L.L.C. and Tecogen Inc. urge the Department to consider several modifications to the Availability clauses and term provisions contained within the Settlement Agreement.

I. AMERICAN DG, INC., OFFICEPOWER, L.L.C. LLC AND TECOGEN INC. SUPPORT AND REAFFIRM THE COMMENTS OF THE NEDGC AND TEC IN OPPOSITION TO THE JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

American DG, Inc. OfficePower, L.L.C. and Tecogen Inc. assert their opposition to the terms of the Settlement Agreement on the same grounds as the NEDGC and TEC as articulated in the Comments of the NEDGC and TEC in Opposition to the Joint Motion for Approval of Settlement Agreement. Accordingly, we urge the Department to reject the Settlement Agreement as filed.

II. ALTERNATIVE REQUEST FOR MODIFICATIONS TO THE SETTLEMENT AGREEMENT

Should the Department choose not to reject the Settlement Agreement, American DG, Inc., Officepower L.L.C. and Tecogen Inc. argue alternatively for the Department to consider the following modifications to the availability clauses and the term provisions. Unlike the terms in the Settlement Agreement, the proposed modifications suggested herein are supported by the evidence in the record and accordingly provide a more substantively defensible compromise solution.

A. The Availability Clauses in the Settlement Rates Should Be Modified to Increase the Minimum Requirements for Availability

Using M.D.T.E. No. 136A(Settlement) as an example, Clause 2(a) should be modified to read as follows:

> 2. The Customer (a) normally satisfies at least **40%** of its maximum internal electric load from generation unit(s) with a combined nameplate rating greater than **500 kW** ("Generation Units), or (b) has installed generation unit(s) with a combined nameplate rating greater than **1,500** kW, where electricity provided by the Generation Units is not delivered over Company-owned facilities under an applicable retail delivery tariff.

Modifying the percentage of maximum internal electric load from the proposed 30% to 40% is appropriate because the 40% figure more accurately represents the demand variability of DG customers within the applicable rate class. The 30% threshold is inconsistent with the Companies' own testimony. As discussed in detail in the Initial Brief of The Energy Consortium and the NE DG Coalition, submitted to the Department on June 4, 2004, NSTAR Electric's own witness, Henry C. LaMontagne provided evidence that DG customers exhibit variability similar to all-requirements customers, despite his contention in his rebuttal testimony that DG customers have markedly higher variability. LaMontagne testified that the originally proposed 20% threshold is based on the Companies observation that medium and large commercial and industrial customers exhibit "normal variability" in the range of 70% to 90%. *Initial Brief of the Energy Consortium and the NE DG Coalition* at 51.

However, according to the Companies' own testimony, customers with a ratio of average billing demand to maximum demand greater than 0.6, would be in the range of normal variability of medium and large commercial and industrial customers. Variability in the range of 70% to 90% corresponds to the ratio of average to maximum billing demand of greater than 0.6 to less than or equal to 0.9. These ratios corresponds to a

threshold value of 40%, not 30% as proposed by the Settlement Agreement. Therefore, based on the evidence in the case, the threshold should be increased to at least 40%.

A 40% threshold is also more consistent with the rate proposed by Boston Edison and approved by the Department in D.P.U./D.T.E. 92-92. Under this rate, customers were assessed for sporadic or intermittent loads when two conditions were true. First, the maximum demand had to exceed the average demand by at least 500 kW. Second, the seasonal maximum demand in both the summer and winter had to be at least twice as high as the average of the other billing demands. This latter provision effectively represents a 50% threshold. Accordingly, a 50% threshold corresponds to charges for intermittent loads as previously proposed by Boston Edison and approved by the Department. *Initial Brief of the Energy Consortium and the NE DG Coalition* at 52. Therefore, an increase of the threshold from 30% to 40% is both reasonable and appropriate, based on evidence presented in the instant case and Department precedent.

Moreover, modifying the percentage of maximum internal electric load from 30% to 40% is consistent with evidence presented in the case regarding the "baseload" value for this customer class. When questioned by Claude Francisco regarding load duration curves for Boston Edison Rate G-3 and Rate T-2 customers, Henry C. LaMontagne ascertained that the heights of the curves, 47.3% for Rate G-3 and 38.2% for Rate T-2, represent the baseload for the average customer within the respective rate class. *3 Tr. 370-371*. Use of a figure more representative of the average baseload for DG customers is consistent with the Department's objective to "ensure that the Companies use[] an appropriate method for the calculation of standby or back up-rates for customers who have their own on-site, self generation facilities." *NSTAR Electric, D.T.E. 03-121*

(January 20, 2004)(Notice of Public Hearing and Procedural Conference).

Increasing the threshold nameplate rating to greater than 500 kW is consistent with NSTAR Electric's own testimony. In a response to a Department Information Request, NSTAR Electric contends that a maximum threshold availability of greater than 500 kW is appropriate because "at that level the distribution system planners generally take specific consideration of the load served by customer generation when designing capacity requirements for distribution circuits". *Exhibit D.T.E. 7-5.* We note, however, no such threshold is addressed in the testimony of the Companies' system planning engineer. Mr. Salamone testified that for planning purposes the Companies' system planners use a threshold of 1 MW. NSTAR Electric does not add known load additions to their econometric forecast in planning unless such additions are greater than 1 MW. *Initial Brief of the Energy Consortium and the NE DG Coalition* at 53.

Further, when questioned about the 500 kW threshold on cross-examination, Mr. Salamone gave a convoluted answer involving some vague "second process" employed by the Companies to determine whether a new customer may be connected to a particular circuit. He was not able to give any specifics about the alleged 500 kW threshold process, nor was he able to identify any specific procedures used by planners which considered the 500 kW threshold. Mr. LaMontagne could not provide any justification for the 500 kW threshold either. *Initial Brief of the Energy Consortium and NE DG Coalition* at 54. Notwithstanding these apparent inconsistencies, a 500 kW threshold at least provides some connection, no matter how tenuous, to the record in this case. Based on the testimony of the Companies' witnesses, there is no planning basis for the threshold of 250 kW proposed by the Settlement Agreement. Therefore, a 500 kW threshold is

entirely appropriate and reasonable and we urge the Department to adopt this modification. That said, we would also support a compromise between our proposed Modification and the Settlement Agreement threshold of 250 kW.

Additionally, increasing the maximum combined nameplate rating for Generation Units to greater than 1,500 kW is appropriate if the Generation Unit is subject to a load limit of 40%. While there is no objective evidence presented in the case as to why there should be any arbitrary size limitation for DG customers who fall within the range of "normal" load variability, such an outcome would be acceptable and would provide NSTAR Electric with some certainty and assurance that very large generation systems would remain subject to the rates in all circumstances.

B. NSTAR Electric Should be Prohibited From Filing a Request to Alter Availability Terms of the Standby Tariff Before August 1, 2011.

In Section 2.3 of the Settlement Agreement, the Settling Parties propose that NSTAR Electric be prohibited from filing a request with the Department to alter the Availability terms of the standby tariffs before August 1, 2008. We urge the Department to modify this section by extending such period of prohibition for one year to August 1, 2011. Given the resources expended in the conduct of the instant case, parties should be guaranteed a greater period of certainty. This modification would create stability for a period of seven years.

CONCLUSION

For the foregoing reasons, and those set forth in the Comments of the Energy Consortium and NE DG Coalition in Opposition to the Joint Motion for Approval of Settlement Agreement, the Department should reject the Settlement Agreement as filed. In the alternative, the Department should refuse to approve the Settlement Agreement

unless it is modified as follows: (1) modify Availability Clause 2(a) to increase minimum thresholds for applicability in order to connect the Settlement Rates to the facts in the record; and (2) prohibit NSTAR Electric from altering the Availability terms of the standby tariff before August 1, 2011.

AMERICAN DG, INC.;
OFFICEPOWER, L.L.C.; AND
TECOGEN INC.

By their attorneys,

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